No. 21-6200

IN THE
Supreme Court of the United States

JESUS RUIZ,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit

REPLY BRIEF FOR PETITIONER

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ARGUMENT

A. The government misunderstands the relief available to Petitioner.

28 U.S.C. 2255 grants federal courts the power to "vacate, set aside, or correct" an unlawful sentence so long as the prisoner serving that sentence is "in custody." The United States makes several observations about Petitioner's case that rely on misunderstandings about the scope and requirements of relief under Section 2255.

1. The government emphasizes that Petitioner is subject to seven life sentences for other counts of conviction. It thinks it unreasonable to imagine that legal developments could affect "all seven of those life terms," BIO 16, and thinks it an "extreme unlikelihood that all seven life sentences for various different crimes would be vacated," BIO 20. It then reasons that because this case does not involve a challenge to the validity of those seven convictions, "the district court could not have granted any relief that would have resulted in, or hastened his release." The government is wrong as a matter of fact and law.

First, it is not hard to imagine the vacatur of all seven life terms. As federal sentences imposed at the same time, they practically amount to one sentence under the sentencing package doctrine. *Dean* v. *United States*, 137 S. Ct. 1170, 1176 (2017); 18 U.S.C. 3584(c). And every component of that package already is unconstitutional. Two of the life terms were imposed after a judge, not a jury, found that the offenses resulted in death, in violation of the Fifth and Sixth Amendments. Pet. App. 3a–4a; see *Alleyne* v. *United States*, 570 U.S. 99 (2013). The other five were imposed under a

mandatory Guidelines regime that violates those same constitutional provisions. Pet. App. 3a; see *United States* v. *Booker*, 543 U.S. 220 (2005). A judicial decision or Congressional enactment that makes the Court's Fifth and Sixth Amendment jurisprudence retroactive to Petitioner would undermine all seven prison terms at once. So too a decision that extends the rationale of *Miller* v. *Alabama*, 567 U.S. 460 (2012), because the life sentences were imposed for acts Petitioner committed just after his 18th birthday. Pet. App. 26a–29a.

Second, even if no new legal developments affect Petitioner's life terms, Section 2255 already confers authority to resentence Petitioner in accordance with the Constitution. When Section 924(c) convictions are invalidated, courts retain the power to adjust the sentences on unaffected counts, and they have used that power, almost always at the government's suggestion. *Dean*, 137 S. Ct. at 1176. That practice has long been approved of in the Seventh Circuit, where Petitioner was convicted. *Woodruff* v. *United States*, 131 F.3d 1238, 1243 (7th Cir. 1997) ("In those cases … the §2255 petition reopens the entire sentence."); see C.A. Pet. Br. 50–53. Section 2255's grant of authority to "vacate, set aside, or correct" an unlawful sentence permits a court to re-examine the entire sentence when a portion of it is upended. So Petitioner stands to benefit from a decision in his favor.

2. The government also conflates a requirement of Section 2255 relief—that a person using Section 2255 be "in custody"—with a substantive limit on the relief available. It argues that Petitioner must be seeking release from custody to

properly use Section 2255. BIO 12. That contention contradicts *Peyton* v. *Rowe*, 391 U.S. 54, 67 (1968), in which the Court held that a prisoner serving consecutive sentences is "in custody" under any one of them for habeas corpus purposes. A "principal aim of the writ is to provide for swift judicial review of alleged unlawful restraints on liberty." *Rowe*, 391 U.S. at 63. Federal courts are authorized and ought to consider challenges to unlawful convictions even if the petitioner is currently serving another sentence. *Sibron* v. *New York*, 392 U.S. 40, 56–57 (1968); *Rowe*, 391 U.S. at 67. There is no doubt Petitioner, who is an inmate at the Federal Correctional Institution in Oxford, Wisconsin, meets the "in custody" requirement of Section 2255.

The court of appeals expressed a similar misunderstanding about the nature of Section 2255 relief. To sustain its harmless-error finding, it had to reckon with the fact that Petitioner's convictions carry collateral consequences—if not those recognized in *Sibron*, then at the very least the $300 in special assessments. Pet. App. 11a–13a. In other words, Petitioner's unlawful Section 924(c) convictions do not carry purely concurrent consequences. *Ray* v. *United States*, 481 U.S. 736, 737 (1987). That is a different question from whether Petitioner qualifies for relief under Section 2255. He surely does: he is in custody and seeks judicial review of a consecutive sentence that he is not currently serving. See *Rowe*, 391 U.S. at 67. The question rather is whether the error in convicting Petitioner for conduct that is not a criminal offense can ever be deemed harmless, see *Sibron* (Question Presented 1), especially in a federal system that assigns collateral consequences to each conviction, see *Ray* (Question

Presented 2). The government conflates the question of the availability of relief with the question of harmless error.

B. The questions presented are important.

1. The court of appeals, along with the government, have treated Petitioner's extra 45 years of prison terms as essentially concurrent, because he is subject to life terms on other counts. Applying that logic, the Seventh Circuit then relied on circuit precedent to discount the fact that Petitioner's sentences are not actually concurrent, see *Ray*, 481 U.S. at 737, because Section 2255 does not authorize relief from the part of the sentence that is not consecutive: the special assessment. Pet. App. 14a–15a. That is the subject of the circuit split this Court should resolve. Pet. 17–19.

Perhaps recognizing that the subject meets the Court's criteria for *certiorari*, Sup. Ct. R. 10(a), the government recasts the court of appeals' decision. The government had urged that court to apply the concurrent sentence doctrine. C.A. U.S. Br. 11–12, citing *Ryan* v. *United States*, 688 F.3d 845, 849 (7th Cir. 2012). The court obliged because "the same considerations" underlying the doctrine were implicated here, where Petitioner's sentences *de facto* run concurrently. Pet. App. 13a–15a. Judge Wood dissented for the very reason the government now opposes review: the doctrine simply does not apply. Pet. App. 24a; BIO 19. But that was the dissent. The government prevailed in the court of appeals by convincing the court to apply the doctrine, whether on its own terms or by analogy.

The government's reasoning places Petitioner's sentences in a quantum state. They are not consecutive, for otherwise *Rowe* plainly authorizes relief under Section 2255 (and how could consecutive prison sentences ever be harmless?). But they are not concurrent either, for that implicates a doctrine that is the subject of an entrenched circuit split. BIO 18–19. The government should not be permitted to advance a legal theory on appeal, succeed on that theory, and then tell this Court that the legal theory had nothing to do with the court of appeals' decision. The validity of the government's theory—the application of the harmless-error doctrine on collateral review—is squarely implicated in this case by the government's own litigation decisions. This Court's review is needed to resolve the circuit split. Pet. 19–20.

2. The facts of Petitioner's case are of course particular to his case. BIO 19–20. But the legal principles involved are of national importance. Does the Constitution tolerate criminal consequences for conduct that is not criminal under an expansive understanding of harmless error? Pet. 9, 10–13. The Seventh Circuit's decision cuts off statutory relief under Section 2255 for any prisoner wrongfully convicted if he is also serving a life term for a different conviction. Nearly 4,000 federal inmates are currently serving life terms. Fed. Bureau of Prisons, *Sentences Imposed*, www.bop.gov/about/statistics/statistics_inmate_sentences.jsp. The court's opinion also cuts off Section 2254 relief for those wrongfully convicted who are also serving life sentences in state prisons—about 200,000 people nationwide. Tom Jackman,

Study: 1 in 7 U.S. prisoners is serving life, and two-thirds of those are people of color, Washington Post (Mar. 2, 2021), at https://wapo.st/3vQgZvh.

The power of punishment lies firmly in the legislative, not judicial, department. *Wooden* v. *United States*, No. 20-5279, 595 U.S. ___ (Mar. 7, 2022) (Gorsuch, J., concurring) (slip op. at 9). When the legislature exceeds the limits of due process in prescribing a punishment, however, the law is a nullity; a vague law is no law at all. *United States* v. *Davis*, 139 S. Ct. 2319, 2323 (2019). Petitioner Jesus Ruiz remains subject to three convictions for offenses the legislature was not permitted to enact, because the judiciary has thus far refused to remove punishments that should never have been imposed. Vindicating the "distinctly American version of the rule of law—one that seeks to ensure people are never punished for violating" incomprehensible laws, see *Wooden*, supra, at 9 (Gorsuch, J.), surely warrants this Court's review.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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